

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554**

In the Matter of	)	
	)	
The Rural Digital Opportunity Fund	)	AU Docket No. 20-34
Auction (Auction 904)	)	
	)	
Rural Digital Opportunity Fund	)	WC Docket No. 19-126

To: Chief, Wireline Competition Bureau

**PETITION FOR PARTIAL RECONSIDERATION OF  
LTD BROADBAND LLC**

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## EXHIBITS

Exhibit 1: California Public Utilities Commission Resolution No. T-17002, dated May 25, 2006

Exhibit 2: California Public Utilities Commission Resolution No. T-17735, dated June 3, 2021

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LTD BROADBAND LLC**

LTD Broadband LLC (“LTD”), by counsel and pursuant to Section 1.106 of the Commission’s Rules,<sup>1</sup> hereby respectfully seeks partial reconsideration of the Commission’s July 26, 2021 *Order*<sup>2</sup> in which, *inter alia*, the Bureau partially denied LTD’s “Petition for Limited Waiver” filed on June 7, 2021<sup>3</sup> (as filed and supplemented, “Waiver Request”), combining this action with the denial of an unrelated waiver request submitted by another Rural Digital Opportunity Fund (“RDOF”) applicant. In the Waiver Request, LTD sought additional time within which to secure Eligible Telecommunications Carrier (“ETC”) designation in eight states that at that time had not yet acted on its pending ETC applications before the relevant state agencies, actions that are required for LTD to receive RDOF funding provisionally allocated to it. The Bureau’s *Order* renders a decision concerning a portion of the Waiver Request, denying relief with respect to three states where LTD has not yet obtained ETC authorization: California,

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<sup>1</sup> 47 C.F.R. § 1.106.

<sup>2</sup> *The Rural Digital Opportunity Fund Auction (Auction 904)*, Order, DA 21-208 (WCB, rel. July 26, 2021) (“*Order*”).

<sup>3</sup> See LTD’s Petition for Limited Waiver, AU Docket No. 20-34, WC Docket Nos. 19-126 & 10-90, filed June 7, 2021.

Kansas, and Oklahoma. Via this Petition for Partial Reconsideration (“Petition”), LTD asks the Bureau to reconsider its *Order* with respect to California. LTD does not seek review of the Bureau’s denial of relief for the states of Kansas and Oklahoma.

## I. INTRODUCTION AND SUMMARY

In the *Order*, the Bureau reasonably articulates that it “must undertake an individual, fact-based analysis for entities that filed outside of [the safe harbor] window to determine if they pursued their required ETC designations in good faith.”<sup>4</sup> With respect to California, however, the Bureau falls short of meeting this standard by not considering material facts contained in the record surrounding LTD’s application to secure ETC status in California.

First, while it obliquely acknowledges the fact that LTD’s principal was lied to repeatedly by its then-counsel in connection with the submission of LTD’s ETC application in California, the Bureau does not consider at all the adverse impact on LTD of this egregious and unforeseeable attorney misconduct. The Bureau was incorrect to impute to LTD responsibility for Mr. Twomey’s gross misconduct by declining to consider the highly unusual circumstances that resulted in its California Public Utilities Commission (“CPUC”) ETC application being filed initially on June 3, 2021, five and a half weeks later than LTD believed, in good faith, was the case.

Second, the Bureau does not address in any manner the more complex and lengthy process required by CPUC Resolution No. T-17002<sup>5</sup> that is necessary to obtain ETC status in

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<sup>4</sup> *Order*, slip op. at 5 (¶ 13).

<sup>5</sup> See attached Exhibit 1, CPUC Resolution No. T-17002, dated May 25, 2006 (Appendices A and B contain comprehensive filing requirements, which include a Commission resolution for approval and an annual reporting requirement for ETC designation. To obtain an ETC designation, the CPUC Communications Division must prepare a draft resolution, which is then placed on the agenda issued 10 days in advance to be voted at a scheduled Commission business meeting, which occurs twice monthly, at most, and sometimes only once during a month). See

California. This process may take 3-6 months. Further, any applicant that does not hold a previously-obtained CPUC certificate of public convenience and necessity (“CPCN”), which is a prerequisite for obtaining ETC designation, must also apply for a CPCN, which typically takes 6-18 months for a full CPUC grant.<sup>6</sup> In fact, all RDOF auction winners lacking either a CPCN or ETC designation and seeking support in the state of California are equally affected by these CPUC requirements and processes, which made it challenging for such entities to obtain full CPUC approval prior to the June 7, 2021 deadline.

## II. DISCUSSION

### A. The Bureau Did Not Consider the Adverse Impact of Egregious Attorney Misconduct on LTD’s Good Faith Efforts to Meet the ETC Designation Deadline

The Bureau’s recitation of facts in the *Order* states that LTD “initially claimed that it filed its ETC designation application with the state [of California] on April 26” and that “LTD later supplemented its petition to indicate that its ETC designation application actually had been filed with the CPUC on June 3.”<sup>7</sup> Later in the *Order*, the Bureau repeats this assessment, stating that “LTD waited until June 3 – almost six months after the date of the release of the Auction 904 Closing Public Notice – to file its ETC designation with CPUC.”<sup>8</sup>

What is lacking in both of these assertions is any examination of the reasons why LTD’s CPUC application was filed on June 3, the reasons it was compelled to update the Commission regarding this actual filing date, or any of the other relevant facts contained in the two

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<https://www.cpuc.ca.gov/about-cpuc/transparency-and-reporting/cpuc-voting-meetings/2021-voting-meetings>.

<sup>6</sup> A CPUC CPCN application routinely takes 6-18 months to process, assuming it is unopposed and the application contains all required information.

<sup>7</sup> *Order* at 3 (¶ 5).

<sup>8</sup> *Id.* at 4 (¶ 11).

supplements to the Waiver Request the *Order* references. These filings make plain that it was not LTD that “waited” to file the California ETC application, but that it was affirmatively misled by its then-counsel as to when the application should have been filed according to the CPUC Communications Division staff and when it was actually filed.

The Bureau’s statements leave out critical facts concerning serious professional misconduct and deception by LTD’s former counsel before the FCC and the CPUC that LTD unknowingly submitted into the record of the waiver proceeding. These supplemental filings show that LTD, along with the CPUC and the Commission, was willfully misled by the attorney that LTD had entrusted with preparing, submitting, and prosecuting its CPUC ETC application. The critical facts that were timely reported in the record of this proceeding in the referenced supplements to the Waiver Request are as follows:

- In January 2021, LTD retained Mr. Kristopher Twomey as counsel to file and prosecute applications for ETC designation in fifteen states, including California; it was the first time that LTD had engaged Mr. Twomey to perform legal work on its behalf.<sup>9</sup>
- Mr. Twomey reported to LTD that he had filed the California ETC application on April 26, 2021, and that it was pending with the CPUC; this information was recorded in a shared LTD tracking document to which Mr. Twomey had both access and the ability to modify.<sup>10</sup>
- When initially confronted with a press report in early June that LTD had not yet filed an ETC application in California, Mr. Twomey asserted to LTD that the CPUC “spokesperson is misinformed,” and provided LTD’s FCC counsel on June 4, 2021 with what he represented to be a date-stamped receipt from the CPUC purporting to indicate that the application was submitted on April 26, 2021.<sup>11</sup>

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<sup>9</sup> See Third Supplement to Petition for Limited Waiver of LTD Broadband LLC, AU Docket No. 20-34, WC Docket Nos. 10-90, 19-126, Declaration of Corey Hauer at 1 (¶ 2) (filed June 28, 2021) (“LTD Third Supplement”).

<sup>10</sup> LTD Third Supplement, Declaration of Corey Hauer at 1 (¶ 3).

<sup>11</sup> Second Supplement to Petition for Limited Waiver of LTD Broadband, LLC, AU Docket No. 20-34, WC Docket Nos. 10-90, 19-126, Declaration of Kristopher E. Twomey at 1 (¶ 4) (filed

- Mr. Twomey subsequently participated in the preparation of the Waiver Request and provided some edits and comments thereto but offered no corrections with respect to the California ETC application.<sup>12</sup>
- It was only on June 21, 2021, following inquiries from the CPUC, that Mr. Twomey admitted the following conduct:<sup>13</sup>
  - He had mailed an application for ETC designation and an application for a CPCN to the CPUC on April 26, 2021 without confirming whether such applications were being accepted by mail during the COVID-19 pandemic.<sup>14</sup>
  - Subsequently, he filed the CPCN and ETC applications electronically with the CPUC on June 3, 2021.<sup>15</sup> It later emerged that in his haste to submit the applications at this belated date, Mr. Twomey miscalculated the required application filing fees, resulting in a need for LTD's new California counsel to resubmit the applications with the correct fees and an official filing date of July 8, 2021.<sup>16</sup>
  - He had fabricated the confirmation receipt dated April 26, 2021 from the electronic filing receipt for the June 3, 2021 submission using a PDF editing function to alter the date and "made up" a docket number for that filing "based on what he believed to be the next number in sequence in the CPUC's system."<sup>17</sup> He also fabricated the docket number of the earlier application that was not submitted to the CPUC, according to the Docket Office head.

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June 23, 2021) ("LTD Second Supplement"); LTD Third Supplement, Declaration of Stephen Coran at 1-2 (¶ 3).

<sup>12</sup> See LTD Third Supplement, Declaration of Corey Hauer at 1 (¶ 4), Declaration of Stephen Coran at 2-3 (¶¶ 4-5). See also LTD Second Supplement, Declaration of Kristopher E. Twomey at 1-2 (¶ 5).

<sup>13</sup> See LTD Second Supplement, Declaration of Kristopher Twomey at 2-3 (¶¶ 11 & 13).

<sup>14</sup> See LTD Third Supplement, Declaration of Corey Hauer at 2 (¶¶ 5 & 6(a)), Declaration of Stephen Coran at 3-4 (¶ 9(a)); LTD Second Supplement, Declaration of Kristopher Twomey at 2 (¶ 6). Mr. Twomey asserted in his Declaration that mailed pleadings to the Docket Office were not accepted during the COVID-19 pandemic; in fact, during early 2021 such mailed pleadings have been accepted at the Docket Office according to Mr. Martin Nakahara, the head of the CPUC Docket Office.

<sup>15</sup> See LTD Third Supplement, Declaration of Corey Hauer at 2 (¶ 5), Declaration of Stephen Coran at 2 (¶ 5) and 3 (¶ 8).

<sup>16</sup> See LTD's CPUC Application, File No. A2107005 (July 8, 2021), *available at* <https://docs.cpuc.ca.gov/PublishedDocs/Efile/G000/M390/K483/390483428.PDF>.

<sup>17</sup> See LTD Third Supplement, Declaration of Corey Hauer at 2 (¶ 6(b) & (c)), Declaration of Stephen Coran at 4 (¶ 9(b) & (c)); LTD Second Supplement, Declaration of Kristopher Twomey at 2 (¶¶ 6, 7 & 10).

- LTD immediately reported to the FCC the misrepresentations Mr. Twomey caused in the record of this proceeding, submitting supplemental filings on June 23 and June 28, 2021.<sup>18</sup>
- LTD terminated Mr. Twomey's representation of the company on all matters on June 23 and June 24, 2021.<sup>19</sup>

None of the foregoing facts is explicitly acknowledged in the *Order*, and even their existence is only vaguely referenced in a footnote with the statements that “the facts in Mr. Twomey’s declaration have been noted,” and that “[t]he Commission takes seriously any possible misconduct of an attorney practicing before the Commission and *this matter will be considered in the appropriate manner.*”<sup>20</sup> And yet these key facts are not considered at all in the context of the decision made as to LTD in the *Order* even though the impact of this extraordinary misconduct on LTD is highly relevant and plainly prejudicial to LTD’s interests and should therefore have been “appropriate” for the Bureau to consider.

Whatever other actions may ultimately be deemed necessary with respect to Mr. Twomey in light of these disclosures, the fact that he repeatedly lied to LTD’s principal and its FCC counsel in the course of representation is a factor that should have been considered in the context of the Waiver Request as a matter of basic equity. LTD is not itself culpable for Mr. Twomey’s unprofessional and dishonest actions because it innocently hired him to perform legal services and could not have foreseen that he would behave improperly, both in terms of the delay filing the application, filing it improperly, and then lying on numerous occasions about when he filed it. Similarly, Mr. Twomey has practiced before both the FCC and the CPUC for many years prior to 2021, but to LTD’s knowledge neither agency has found that he has previously engaged

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<sup>18</sup> See LTD Second Supplement, Declaration of Kristopher E. Twomey, and LTD Third Supplement, Declaration of Corey Hauer at 3 (¶ 7(a)), Declaration of Stephen Coran at 4 (¶ 10).

<sup>19</sup> See LTD Third Supplement, Declaration of Corey Hauer at 3 (¶ 7(b)),

<sup>20</sup> *Order* at 3 n.18 (emphasis added).

in such deceitful misconduct. All three entities are therefore victims of Mr. Twomey's recent deceptions.

Indeed, since the *Order* was released, both the FCC and LTD have been made aware of additional falsehoods that Mr. Twomey asserted concerning an ETC application filed in another state subject to the Waiver Request with respect to the timing the application's submission to the relevant state regulatory agency. On August 3, 2021, the Nebraska Public Service Commission ("NPSC") filed a letter with the FCC stating that "LTD filed an application for ETC designation with the NPSC on May 3, 2021,"<sup>21</sup> rather than the April 28, 2021 date reflected in the Waiver Request. This letter also made known to LTD for the first time that on May 4, 2021 an NPSC staff attorney advised Mr. Twomey that "the NPSC did not anticipate being able to approve the application prior to June 7."<sup>22</sup> These additional disclosures reveal a pattern of misrepresentation and concealment for which Mr. Twomey alone is responsible.

The Bureau was incorrect to impute to LTD responsibility for Mr. Twomey's gross misconduct by declining to consider the unusual circumstances that resulted in its CPUC ETC application being filed on June 3, 2021, five and a half weeks later than LTD believed, in good faith, was the case. The Bureau's reliance on the later date is of particular significance given the Bureau's emphasis in distinguishing prior waiver grants from the present circumstances premised on the fact that those previously granted waivers did not "file with the appropriate state

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<sup>21</sup> Letter from Cullen Robbins, Director, Communications & NUSF, NPSC, to Marlene H. Dortch, Secretary, FCC, AU Docket No. 20-34, WC Docket Nos. 19-126 & 10-90, at 2 (dated August 3, 2021) ("NPSC Letter"). *See also* Fourth Supplement to Petition for Limited Waiver of LTD Broadband LLC, AU Docket No. 20-34, WC Docket Nos. 10-90, 19-126, Declaration of Corey Hauer at 1-2 (¶ 6) (filed August 10, 2021) ("Neither the letter nor the facts stated in that letter were known to me before Mr. Coran forwarded it to me on August 5, 2021"); Declaration of Stephen Coran at 1-2 (¶ 4).

<sup>22</sup> NPSC Letter at 2.

commission less than a month before the Commission’s ETC deadline ... as LTD did in California.”<sup>23</sup>

LTD reasonably and in good faith believed Mr. Twomey’s explicit representations that the California and Nebraska applications were submitted on the dates that he identified and that satisfactory progress toward designation was being made based on those filing dates. Mr. Twomey was the only actor who exhibited a lack of diligence or good faith with respect to the California ETC application. Courts in the D.C. Circuit and elsewhere have found that where a lawyer’s misconduct is egregious, specifically including circumstances where the client has been affirmatively deceived about whether timely action has been taken, it is appropriate to toll filing deadlines.<sup>24</sup> This is especially the case in this instance where there is no counter party to litigation whose interests might be prejudiced by favorable action on LTD’s waiver request.<sup>25</sup>

**B. In Assessing LTD’s Waiver Request, the Bureau Did Not Consider the California PUC’s Lengthier and More Complicated Review Process, Which Impacts Equally All First-Time CPCN Applicants Seeking ETC Status in California.**

The nature of the California ETC approval process provides a related and additional basis for reconsideration. On April 16, 2021, the CPUC emailed a draft resolution to interested parties on several CPUC service lists proposing to grant only five applications for ETC status, all of which were filed by companies with existing CPCN authorizations using the CPUC’s expedited

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<sup>23</sup> *Order* at 6 (¶ 14).

<sup>24</sup> *Jackson v. Wash. Monthly Co.*, 569 F.2d 119, 123 (D.C. Cir. 1977) (“Dismissals for misconduct attributable to lawyers and in no wise to their clients invariably penalize the innocent and may let the guilty off scot-free”); *Dillon v. Conway*, 642 F.3d 358, 364 (2d Cir. 2011) (tolling relief granted where an attorney “admitted affirmatively and knowingly *misleading*” his client as to the timely filing of a *habeas* petition) (“*Jackson*”) (emphasis in original).

<sup>25</sup> *Jackson*, 569 F.2d at 123 (“When the client has not personally misbehaved and his opponent in the litigation has not been harmed, the interests of justice are better served by an exercise of discretion in favor of appropriate action against the lawyer as the medium for vindication of the judicial process and protection of the citizenry from future imposition”).

Advice Letter process to obtain ETC designation for their RDOF areas.<sup>26</sup> This action made plain that other applicants for which a lengthier application process would be required<sup>27</sup> would not and could not be granted in advance of the June 7, 2021 deadline. Indeed, the conditional ETC authorization for the five companies using “fast-track” Advice Letter process was only granted on June 3, 2021,<sup>28</sup> just four days before the FCC’s deadline. No other applicants for ETC status, regardless of whether they submitted their applications within the FCC’s 30-day safe harbor or during the ensuing months, were able to secure a California ETC authorization on or before June 7, 2021.

A map attached to Appendix A to the CPUC resolution shows the relatively small number of RDOF applicants covered by the decision granting additional ETC status.<sup>29</sup> Many of the areas shown in light green on that map are census blocks for RDOF applicants in the same category as LTD, *i.e.*, those not previously granted ETC (or CPCN) status in California and thus facing a lengthy process to obtain such designation.<sup>30</sup> The critical factor in this delay is not the timing of submission to the CPUC of their ETC applications, but the fact that none had previously been granted CPUC CPCN authority and therefore none was in a position to seek an ETC designation through the expedited Advice Letter process. Accordingly, all of the ETC

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<sup>26</sup> See California Public Utilities Commission Resolution No. T-17735 at 14, Findings and Conclusions, ¶ 11 (adopted June 3, 2021) (“CPUC Resolution T-17735”). A copy of this resolution is attached hereto as Exhibit 2.

<sup>27</sup> See California Public Utilities Commission Rules of Practice and Procedure, §2.1(c). See also Waiver Request at 3 (“The CPUC’s Rules of Practice and Procedure establish a deadline of eighteen (18) months to resolve rate-setting proceedings”). A CPUC Application for a CPCN is typically categorized as a “rate-setting” proceeding and is a prerequisite to obtaining an ETC designation.

<sup>28</sup> See CPUC Resolution T-17735.

<sup>29</sup> *Id.*, Appendix A at 18. See Exhibit 2.

<sup>30</sup> *Id.*

applications filed with the CPUC after January 6, 2021 are currently pending, and each such applicant submitted its ETC application with reasonable diligence considering the projected length of the CPUC certification process. As noted in the Waiver Request, the Commission's ECFS database reflects the filing of numerous other waiver requests submitted by RDOF auction winners, each of which has cited the additional time it will take the CPUC to process, consider and approve requested ETC designations.<sup>31</sup>

Given the length of the CPUC process and the certainty that it could only be completed after the FCC deadline, it was reasonable for an applicant such as LTD, which was required to seek new ETC status in multiple states, to prioritize filing in states where the process *could* potentially be completed in the near term, in advance of the June 7 deadline. As explained above, LTD reasonably believed that its CPUC ETC application had been submitted as of April 26, 2021.

These facts fundamentally undermine the Bureau's determination that the public interest would not be served by grant of the requested waiver with respect to California ETC designation. As the Bureau accurately observed in its *Order*, "the purpose of the Commission's deadline for securing ETC designation is to encourage applicants to act diligently in order to allow the Commission to move as quickly as possible toward disbursing critical universal service support."<sup>32</sup> But for RDOF support allocated to winning bidders seeking ETC status in California, moving "as quickly as possible" necessarily involves awaiting the completion of the ETC authorization process prior to disbursement. As the Bureau stated in the *Order*, "a waiver

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<sup>31</sup> See Waiver Request at 3 & n.6, *citing* the following waiver petitions relating to the CPUC process filed in AU Docket No. 20-34 and WC Docket Nos. 10-90 & 19-126: Cal.Net, Inc. (filed June 3, 2021); Wavelength LLC (filed June 2, 2021); Hankins Information Technology (filed May 25, 2021); One Ring Networks, Inc. (filed May 13, 2021); and Etheric Communications, LLC (filed May 12, 2021).

<sup>32</sup> *Order*, *slip op.* at 5 (¶ 13).

may be warranted in some cases when a state commission takes longer than 180 days to designate a provider as an ETC.”<sup>33</sup> This is certainly applicable here where the CPUC process may take three times that long. Finally, the duration of this CPUC-mandated approval process undermines the Bureau’s notion that rejection of LTD’s Waiver Request for California “could potentially make areas available for other federal and state broadband programs.”<sup>34</sup>

Grant of the waiver that LTD requested on June 7, 2021 would be fully consistent with applicable Bureau precedent. Indeed, the Bureau has previously granted multiple waivers of the ETC designation deadline *on its own motion* where Connect America Fund Phase II ETC applicants filed within one month or less of the deadline (one applicant submitted its request just three days prior to the deadline).<sup>35</sup> In these cases, the Bureau has made clear that where “the delay [in the issuance of the ETC designation] is unrelated to the filing date of [the petitions for ETC designation], waiver of the deadline is appropriate.”<sup>36</sup> Such is the case here where the timing of LTD’s CPUC applications placed it in no different position than other ETC/CPCN applicants that filed during the first half of 2021 but after the January 6, 2021 safe harbor date. The expected delay in the processing of these applications is fundamentally a result of the CPUC process and not related to the specific date on which each such CPCN/ETC application was filed.

Accordingly, in light of the combination of circumstances described herein, it is entirely appropriate and equitable for the Bureau to allow LTD to prosecute the California CPCN and

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<sup>33</sup> *Id.* at 4 (¶ 10).

<sup>34</sup> *Id.* at 6 (¶ 15).

<sup>35</sup> See *Telecommunications Carriers Eligible for Universal Service Support; Connect America Fund*, 34 FCC Rcd 2934, 2943 (¶ 32) (WCB 2019) (applicant filed for ETC designation three days prior to the deadline); *Telecommunications Carriers Eligible for Universal Service Support; Connect America Fund*, 34 FCC Rcd 1966, 1974-75 (¶ 31) (WCB 2019) (two petitioners filed ETC designation applications “approximately one month before the [ETC designation certification] filing deadline).”

<sup>36</sup> 34 FCC Rcd at 1975 (¶ 31).

ETC application that it approved for filing no later than April 26, 2021, but that was ultimately submitted on June 3, and accepted as filed as of July 8, 2021 in Application 21-07-005. LTD's application will be considered alongside the applications of other provisional RDOF auction winners that are, as a practical matter, similarly situated with LTD with respect to the expected timing of processing of their CPUC ETC applications and offer the best near-term opportunity for timely initiation of new voice and broadband service in the RDOF-eligible areas of California.

### III. CONCLUSION

For the foregoing reasons, LTD Broadband LLC respectfully requests that this Petition for Partial Reconsideration of the Bureau's July 26, 2021 *Order* be granted, and that LTD not be considered to be in default with respect to its RDOF application for eligible census blocks in California. Such action is appropriate because (1) LTD cannot reasonably be imputed with the gross misconduct and deception engaged in by its then-newly-retained, and since dismissed, counsel, Mr. Twomey, which was undertaken without LTD's knowledge or consent and contrary to its express instructions, and (2) the actual filing of LTD's California ETC/CPCN applications, though effected later than authorized by LTD, leaves LTD in the same position as other RDOF auction winners that also filed their ETC applications before June 7, 2021. Under these unique circumstances, the public interest would be served by partial reversal of the Bureaus' *Order*,

thereby permitting LTD to continue its pursuit of support and implementation of new voice and broadband service to unserved rural areas in California for which it was the recipient selected via the RDOF auction.

Respectfully submitted,

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August 25, 2021

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## **Exhibit 1**

**California Public Utilities Commission Resolution  
No. T-17002, dated May 25, 2006**

**PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

**Telecommunications Division  
Public Programs Branch**

**RESOLUTION T- 17002  
May 25, 2006**

**R E S O L U T I O N**

**Resolution T-17002. Adopting Comprehensive Procedures and  
Guidelines for Eligible Telecommunications Carrier Designation and  
Requirements for Eligible Telecommunications Carriers**

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**Summary**

In February 2006 the Federal Communications Commission issued Report and Order (FCC 05-46) in the Matter of Federal-State Joint Board on Universal Service (CC Docket No. 96-45) encouraging states to adopt additional requirements for eligible telecommunication carrier (ETC) designations and strengthen reporting requirements for ETCs “in order to ensure that high-cost universal service support continues to be used for its intended purposes.” This resolution amends the procedures and guidelines for ETCs designation set forth by the Commission in Resolution T-16086. Likewise, this resolution revises the reporting requirements for ETCs eligible to receive federal high-cost support adopted in Resolution T-16830 dated May 6, 2004. Resolutions T-16086 and T-16830 are superseded by this Resolution as of July 1, 2006. The Comprehensive Procedures and Guidelines for ETC Designation, attached as Appendix A, and the Comprehensive Reporting Requirements for ETCs Eligible to Receive Federal High-Cost Support, attached as Appendix B, are adopted and shall take effect on July 1, 2006.

**Background**

Resolution T-16086 established procedures and guidelines for designating ETCs pursuant to FCC 97-157. Resolution T-16830 established the reporting requirements for ETCs eligible to receive federal universal high-cost support pursuant to FCC 03-249.

In FCC 05-46 dated February 25, 2005, the FCC adopted additional mandatory requirements for ETC designation and ETC reporting requirements for federal universal

high-cost support.<sup>1</sup> In the same order, the FCC encouraged states that exercise jurisdiction over ETC designations pursuant to section (214 (e) (2) of the Communications Act, to adopt these requirements.<sup>2</sup>

## Discussion

The CPUC has asserted jurisdiction over ETC designations in California. CPUC finds that additional mandatory requirements for ETC designation and ETC eligibility reasonable as it provides a means to monitor and ensure that any funds given to California ETCs are used to achieve the goals of universal service.<sup>3</sup>

Therefore, we revise our existing rules and adopt:

- Comprehensive Procedures and Guidelines for ETC Designation, attached as Appendix A; and
- Comprehensive Reporting Requirements for ETCs Eligible to Receive Federal High-Cost Support, attached as Appendix B

The Comprehensive Procedures and Guidelines for ETC Designation, attached as Appendix A and the Comprehensive Reporting Requirements for ETCs Eligible to Receive Federal High-Cost Support, attached as Appendix B, shall take effect on July 1, 2006.

This resolution supersedes Resolutions T-16086 and T-16830 as of July 1, 2006.

### **I. Procedures and Guidelines for Eligible Telecommunications Carrier Designation**

In Resolution T-16086, the Commission established procedures and guidelines for designating ETCs pursuant to FCC 97-157. FCC 05-46 expanded the FCC ETC designation requirements to include submissions relating to:

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<sup>1</sup> Section 214 (e) (6) directs the FCC to designate carriers when those carriers are not subject to the jurisdiction of a state commission.

<sup>2</sup> Section 214 (e) (2) provides state commissions with the primary responsibility for designating ETCs.

<sup>3</sup> In the FCC Report and Order, the FCC did not adopt the Joint Board's recommendation that an ETC applicant demonstrate that it has the financial resources and ability to provide quality services throughout the designated service area. Similarly, CPUC does not adopt this criterion in evaluating ETC applications since CPUC already applies this criterion in evaluating applications for Certificate of Public Convenience and Necessity (CPCN). CPUC, in granting a **CPCN**, requires the carrier applicant to submit an application, submitting among others, the carrier's financial statement (Rule 17 of the CPUC Rules of Practice and Procedure). Likewise, under Appendix A, 4.B.1. of Decision 95-07-054, all new applicants seeking CPCNs are required to demonstrate that they have adequate financial resources - \$100,000 for facilities based CLCs and \$25,000 for non-facilities based CLCs.

- Commitment to provide service;
- Five-Year Service Quality Improvement Plan;
- Ability to Remain Functional;
- Consumer Protection;
- Local Usage; and
- Equal Access.

The Comprehensive Procedures and Guidelines for ETC Designation, attached as Appendix A, include existing procedures and guidelines for designating ETCs set forth in Resolution T-16086, and additional submissions based on FCC 05-46.

## **II. Reporting Requirements for Eligible Telecommunications Carriers Eligible to Receive Federal High-Cost Support**

In Resolution T-16830, the Commission adopted reporting requirements for rural and non-rural Incumbent Local Exchange Carriers (ILECS) and competitive ETCs providing basic exchange access lines in the service areas of the rural and non-rural ILECS eligible for federal high-cost support pursuant to FCC 03-249. FCC 05-46 expanded the reporting requirement to include:

- A progress update on the Five-Year Service Quality Improvement Plan;
- Detailed information on outages in the ETC's network services; and
- Number of unfulfilled requests for service from potential customers for the past year and the number of complaints per 1,000 handsets or lines.

The Comprehensive Reporting Requirements for ETCs Eligible to Receive Federal High-Cost Support, attached as Appendix B, include existing requirements set forth in Resolution T-16830 and additional requirements based on FCC 05-46.

Existing ETCs, who have been designated prior to the effective date of this resolution, are required to comply with the new reporting requirements listed in Appendix A, Section II, when these carriers file advice letters certifying to their eligibility to receive federal high-cost support seeking federal universal high-cost support on or before September 15, 2006. This filing shall serve as baseline data for future advice letter filings made by these ETCs. Annually, thereafter, these ETCs are to comply with the reporting requirements as listed in Appendix B, Section II, of this resolution.

### **III. Minor Procedural Change**

#### **A. Procedures**

For simplicity, uniformity and ease of implementation, all ETCs, whether, rural or non-rural, are required to include in their annual advice letter filing the current basic residential service rates, excluding Extended Area Service, in the areas they serve as well as attach the required reports enumerated above as shown in the Appendix B, Section III.

It is stressed that carriers' books are subject to Commission audit and inspection at any time to ensure that the funds are used as certified. If a carrier eligible to receive federal universal service high-cost support fails to file the advice letter in a timely manner, the Commission is not responsible for any loss of support due to the Commission's filing of the certification with the FCC and the USAC at a later date.

#### **B. CMRS**

The requirement for CMRS carriers to indicate in their self-certification letters how Lifeline and Link Up rate reductions will be passed on through to qualifying low-income customers (Ordering Paragraph 3(f) of Resolution T-16086) is deleted from this new procedure. Pursuant to Section 54.401 of Title 47 of the Code of Federal Regulations, ETCs requesting for FCC support under Tier 2 (\$1.75 per customer per month) have to certify to the Universal Service Fund (USF) administrator that it will pass through this entire amount to the qualifying low-income customer.

### **Comments**

In compliance with PU Code § 311 (g), a notice letters was e-mailed on March 14, 2006 to all telecommunications carriers, the California High Cost Fund A – Administrative Committee, and the parties of record in R.01-08-002 and A.99-09-044 informing these parties that this draft resolution is available at the Commission's website <http://www.cpuc.ca.gov/static/documents/index.htm> and is available for public comments. In addition, the Telecommunications Division (TD) informed these parties of the availability of the conformed resolution at the same website.

Their comments are as follows:

1. The Commission is not required to adopt the FCC's Standards without change

In the FCC report and Order, states are not bound to follow the principles outlined in the Report and Order. While the small LECs support much of what FCC accomplished in the Report and Order, the small LECs do not believe that ignoring the historical differences between incumbent local

exchange carriers and competitive ETCs (usually wireless carriers), is the most efficient way to handle designation of ETCs. Applying the FCC standards without regard to historical differences only serves to drive up regulatory compliance costs with no attendant benefit to subscribers.

2. The Commission should not apply the Five Year Service Quality Improvement Plan to the small LECs

The submission of a plan is not necessary to ensure that the federal support received by the small LECs is used for its intended purpose. Since the Commission has designated the small LECs also as Carriers of Last Resort (COLRs), they are required to offer all the elements of basic service and to offer basic service to any customer requesting service in their service areas. Furthermore, the small LECs are subject to the service quality reporting requirements specified in General Order 133-B.

3. Additional reports regarding outage information and unfilled requests are not necessary. These two reporting requirements should be addressed to ETCs which are not subject to General Order 133-B. The small LECs already submit these reports in compliance with General Order 133-B, specifically, Customer Trouble Reports and Held Primary Service Orders.
4. The Commission should not require "coverage" maps from the small LECs.

The small LECs have maps on their service areas on file with the Commission, which are adequate for understanding the coverage the small LECs provide in their service areas.

We agree with comment 1. Although states are only encouraged to adopt the new FCC standards, CPUC finds the new standards based on the FCC standards to be reasonable and in keeping with CPUC's thrust to ensure that all public support received, whether from the federal or state government, is used for the purpose for which the support is given. We have modified the Comprehensive Procedures and Guidelines for ETC Designation and the Comprehensive Reporting Requirements for ETCs Eligible to Receive Federal High-Cost Support to reduce the amount of information required and avoid duplication with other CPUC reporting requirements. The goal is to require information from each ETC sufficient for the CPUC to determine if it should certify to the FCC that the ETC uses federal high-cost support only for the intended purposes under law, and to determine how the funds benefit customers in California. We determined that we could make such a determination with less information on many topics than the FCC requires of companies it certifies.

We do not agree with comment 2. G.O. 133-B requires carriers to submit various reports summarizing past activities but not a forward- looking improvement plan. Therefore,

we will require the submission of a two-year service quality improvement plan by all designated ETCs. These filings shall serve as baseline data for future advice letter filings made by these ETCs. The two-year plan is a projection of the remainder of the current year and the upcoming year, which is not covered by G. O. 133-B. However, if a designated ETC submitted a five-year plan in a General Rate Case<sup>4</sup> (GRC) application that has been approved by the Commission and is still in effect, the carrier may refer to its GRC filing and submit a progress report on the plan covered by the GRC.

We recognize that the majority of the federal universal service support received by ETCs is based on the ETC's investment and expenses. Thus, the report must provide a description of investments made and expenses paid with support from the federal high-cost fund.

In addition, the two-year service quality improvement plan will include: the ETC's projected operating expense requirements for the current and following year; a certification that the investments made and expenses paid will be incurred to maintain and provide telecommunication services to any customer requesting service in ETC's service area; a description of any capital improvements planned including whether the funds for the improvements are from operating expenses, grants, or loaned funds from the Rural Utilities Service or some other government or private institution; and a description of the benefits to consumers that resulted from the investments and expenses reported pursuant to this requirement.

We agree with comment 3 in that the ETCs should not submit reports that they have submitted during the year. However, the small LECs reference to Customer Trouble Report as required under G. O. 133-B does not satisfy the outage report requirement. The outage report is equivalent to the Major Service Interruptions Report required by CPUC for submission in accordance with a memorandum issued by CPUC on October 5, 1977. Therefore, we revise Appendix B, Section II, B and C of the reporting requirement as follows:

- B. Detailed information on outages in the ETC's network caused by emergencies, including the date and time of onset of the outage, a brief description of the outage and its resolution, the particular services affected by the outage, the geographic areas affected by the outage, and steps taken to prevent a similar outage situation in the future. If an ETC has submitted a Major Service Interruptions Report in accordance with CPUC Memorandum dated October 5, 1977 (attached as Appendix B, Section IV), the ETC need not submit the same

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<sup>4</sup> The filing of a General Rate Case is in accordance with guidelines adopted in D.88-07-022, as modified in D.91-09-072, Appendix of D.91-09-042 – Implementation of the California Intrastate High Cost Fund.

report. However, in their self-certification letter, the ETC should cite the date(s) of submission of the report; and

- C. Information on the number of unfulfilled requests for service from potential customers for the past year and the number of complaints per 1,000 handsets or lines. If an ETC has submitted the Held Primary Service Order and Customer Trouble Reports in accordance with Sections 3.1 and 3.3 of G. O. 133-B, the ETC need not submit the same reports. However, in their self-certification letter, the ETC should cite the date(s) of submission of the reports.

We disagree with comment 4. For designated ETCs the map required is not a coverage map but a map detailing progress towards meeting the ETCs plan targets, an explanation of how much universal service support was received and how the support was used to improve signal quality, coverage, or capacity; and an explanation regarding any network improvement targets that have not been fulfilled. Since this requirement is already covered in Section II-A of Appendix B, Section II. D of Appendix B of the draft resolution is deleted. Likewise, for the same reason, Section II.E of Appendix B of the draft resolution is deleted. Further, an ETC that does not plan changes in its service area does not need to refile its existing service area map, but should cite the date(s) of submission of the maps.

Pacific Bell d/b/a AT & T California, filed comments on March 29, 2006, supporting the proposed procedures and guidelines for designating ETCs as they incorporate the new requirements identified in FCC Report and Order 05-46. However, AT & T recommends that the Commission include a determination that the ETC designation is consistent with the public interest, convenience and necessity. We agree with Pacific Bell's comments. We, therefore, require all ETC applicants requesting ETC designation in areas below the study area level of rural incumbent LECs to show that there is no creamskimming.<sup>5</sup> ETC applicants are required to include in their advice letter a public interest determination demonstrating: how the designation will increase consumer choices, the advantages and disadvantages of the ETC applicant's service offering and absence of creamskimming. Thus, we have included Public Interest Determination in the Comprehensive Procedures and Guidelines for Eligible Telecommunications Carrier Designation (Section II. G of Appendix A).

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<sup>5</sup> FCC Order 05-46, Paragraph 49, in the matter of Federal-State Joint Board on Universal Service (CC Docket No. 96-45).

## Findings

1. The Commission is responsible for designating Eligible Telecommunications Carriers (ETCs) in California.
2. Carriers should satisfy the criteria established by Section 214(e) of the Act and set forth in the Federal Communications Commission (FCC) rules in order to be designated as ETC.
3. The FCC has adopted additional eligibility and reporting requirements for carriers seeking ETC designation and carriers already designated as ETCs in Federal Report and Order FCC 05-46 adopted on February 25, 2006.
4. The Commission should adopt the additional eligibility and reporting requirements by consolidating the previous eligibility and reporting requirements prescribed in Resolutions T-16086 and 16830 in a new Resolution, which will supersede Resolutions T-16086 and 16830.
5. The new comprehensive procedures and guidelines for ETC Designation, attached as Appendix A, and the new Comprehensive Reporting Requirements for ETCs to receive Federal High-Cost Support, attached as Appendix B, should be adopted and should take effect on July 1, 2006.
6. A notice letter was e-mailed on March 14, 2006 to all telecommunications carriers, the California High Cost Fund-A Administrative Committee, and the parties of record in R.01-08-002 and A.99-09-044 informing these parties that this draft resolution is available at the Commission's website <http://www.cpuc.ca.gov/static/documents/index.htm> and is available for public comments. In addition, the Telecommunications Division (TD) informed these parties of the availability of the conformed resolution at the same website.
7. On March 29, 2005, Calaveras, Cal-Ore, Ducor, Foresthill, Global Valley, Happy Valley, Hornitos, Kerman, Pinnacles, Ponderosa, Sierra, Siskiyou, Volcano and Winterhaven filed joint comments and SureWest filed comments recommending changes to the reporting requirements. Their comments are as follows:
  - a) The Commission is not required to adopt the FCC's Standards without change
  - b) The Commission should not apply the Five Year Service Quality Improvement Plan to the small LECs
  - c) Additional reports regarding outage information and unfilled requests are not necessary

- d) The Commission should not require “coverage” maps from the small LECs.
- 8. Pacific Bell d/b/a/ AT & T California , filed comments on March 29, 2006, supporting the proposed procedures and guidelines for designating ETCs as they incorporate the new requirements identified in FCC Report and Order 05-46. However, AT & T recommends that the Commission include a determination that the ETC designation is consistent with the public interest, convenience and necessity.
- 9. CPUC agrees with the comments of the small LECs and SureWest as far as reporting unfilled requests and has made the necessary revision in this resolution.
- 10. CPUC agrees with Pacific Bell’s comments and has included Public Interest Determination as a required submission for ETC applicants.

**THEREFORE, IT IS ORDERED that:**

- 1. Effective July 1, 2006, carriers seeking Eligible Telecommunications Carrier (ETC) designation must comply with the comprehensive procedures and guidelines for ETC Designation, attached as Appendix A, and the Comprehensive Reporting Requirements for ETCs to receive Federal High-Cost Support, attached as Appendix B.
- 2. Existing ETCs, who have been designated prior to the effective date of this resolution, are required to comply with the new reporting requirements listed in Appendix A, Section II, when these carriers file advice letters certifying to their eligibility to receive federal high-cost support seeking federal universal high-cost support on or before September 15, 2006. The two - year service quality improvement plan to be submitted by existing carriers shall serve as baseline data for future advice letter filings. Annually, thereafter, these ETCs are to comply with the reporting requirements as listed in Appendix B, Section II, of this resolution. However, if a designated ETC submitted a five-year plan in a GRC application that has been approved by the Commission and is still in effect, the carrier may refer to its GRC filing and submit a progress report on the plan covered by the GRC.

This Resolution is effective today.

I hereby certify that this Resolution was adopted by the Public Utilities Commission at its regular meeting on May 25, 2006. The following Commissioners approved it:

/s/ STEVE LARSON

STEVE LARSON  
Executive Director

MICHAEL R. PEEVEY  
President  
GEOFFREY F. BROWN  
DIAN M. GRUENEICH  
JOHN A. BOHN  
RACHELLE B. CHONG  
Commissioners

## Appendix A

## **Comprehensive Procedures and Guidelines For Eligible Telecommunications Carrier Designation**

Each telecommunications carrier seeking eligible telecommunications carrier designation must file an advice letter with the Commission with the following information:

### **Section I – Compliance with FCC 97-157**

- A) The service areas for which the carrier is requesting ETC designation including a List of Geographic Service Areas and a map in .shp format showing the proposed service area. For wireless petitioners, the map should identify the location of cell sites and shade the area where the carrier provides commercial mobile radio service or similar service.
- B) An itemized list of the designated services to be provided, i.e.
  - ✓ Single party service;
  - ✓ Voice grade access to the public switched network;
  - ✓ Local usage;
  - ✓ Dual tone multi-frequency signaling or its functional equivalent;
  - ✓ Access to emergency services;
  - ✓ Access to operator services;
  - ✓ Access to interexchange services;
  - ✓ Access to directory assistance; and
  - ✓ Toll limitation for qualifying low-income consumers.
- C) A list of any services which the carrier proposes not to provide and for which the carrier is seeking an extension of time.
- D) An indication of whether the carrier plans to apply for a waiver of the requirement that an ETC not disconnect lifeline for non-payment of toll.
- E) A description of the carrier's advertising plan, indicating the advertising media to be used, and an explanation of how its plan meets the advertising requirement in section 214(e) of the Telecommunications Act.
- F) If necessary, implement tariff changes via the advice letter filing process. This provision would not apply to carriers that are not required to maintain tariffs.
- G) If applicable, request additional time to perform network upgrades to provide single-party service, access to E911 service, and/or toll limitation to low income customers.

## **Section II – Compliance with FCC 05-46**

### **A) Commitment to Provide Service**

An ETC applicant must demonstrate that it has the commitment and ability to provide supported services throughout the designated area by providing services to all requesting customers within its designated service area. Each applicant shall certify that it will:

1. provide service on a timely basis to requesting customers within the applicant's service area where the applicant's network already passes the potential customer's premises; and
2. provide service within a reasonable period of time, if the potential customer is within the applicant's licensed service area but outside its existing network coverage, if service can be provided at reasonable cost by:
  - a. modifying or replacing the requesting customer's equipment;
  - b. deploying a roof-mounted antenna or other equipment;
  - c. adjusting the nearest cell tower;
  - d. adjusting network or customer facilities;
  - e. reselling services from another carrier's facilities to provide service; or
  - f. employing, leasing or constructing an additional cell site, cell extender, repeater, or other similar equipment.

If the carrier determines that it cannot serve the customer using one or more of these methods, then the carrier must report the unfulfilled request within 30 days after making such determination.

### **B) Submission of Two-Year Service Quality Improvement Plan**

In submitting a formal plan detailing how it will use universal service support to improve service within the service areas for which it seeks designation, an ETC must submit a two-year plan describing its proposed improvements or upgrades to the ETC's network on a wire center-by-wire center basis throughout its designated service area. The two-year plan must demonstrate in detail how high-cost support will be used for service improvements that would not otherwise be made without such support. This must include:

- 1) a description of any plan for investment to be made or expenses to be incurred which will improve or permit the offering of services that are the subject of reporting requirements in FCC Form 477 (the form and instructions may be accessed at: <http://www.fcc.gov/formpage.html#477>);

- 2) a description of investments made and expenses paid with support from the high-cost fund;
- 3) the projected start date and projected completion date for each improvement and the estimated amount of investment for each project;
- 4) the specific geographic areas where the improvements will be made;
- 5) the ETC's projected operating expense requirements for the current and following year;
- 6) a certification that the investments made and expenses paid will be incurred to maintain and provide telecommunication services to any customer requesting service in ETC's service area;
- 7) a description of any capital improvements planned including whether the funds for the improvements are from operating expenses, grants, or loaned funds from the Rural Utilities Service or some other government or private institution; and
- 8) a description of the benefits to consumers that resulted from the investments and expenses reported pursuant to this requirement.

Carriers should provide this information for each wire center in each service area for which they expect to receive universal service support. Service quality improvements in the two-year plan do not necessarily require additional construction of network facilities.

#### C) Ability to Remain Functional

In order to be designated as an ETC, the carrier must demonstrate that it has back-up power to ensure functionality without an external power source, is able to reroute traffic around damaged facilities, and is capable of managing traffic spikes resulting from emergency situations.

#### D) Consumer Protection

The carrier seeking ETC designation should demonstrate its commitment to meet consumer protection and service quality standards in its application. Thus, an ETC applicant should report information on consumer complaints per 1,000 handsets or lines on an annual basis. Likewise, a carrier should commit to serve the entire service area and provide two-year network improvement plans addressing each wire center for which it expects to receive support.

#### E) Local Usage

The carrier should be able to demonstrate that it offers a local usage plan comparable to the one offered by the incumbent LEC in the service areas for which the carrier seeks designation.

F) Equal Access

The carrier should be able to provide equal access if all other ETCs in the service area relinquish their designations pursuant to section 214 (e) (4) of the Act.

G) Public Interest Determination

The carrier should be able to show that the carrier's designation as an ETC is consistent with the public interest, convenience and necessity. Therefore, the ETC applicant should demonstrate: that the designation will increase consumer choices, the advantages and disadvantages of its service offerings, and the absence of creamskimming.

## **APPENDIX B**

**Comprehensive Reporting Requirements  
For  
Eligible Telecommunications Carriers  
Eligible for Federal High-Cost Support**

Each telecommunications carrier eligible for federal universal service high-cost support must file an advice letter with the Commission with the following information:

**Section I – Compliance with FCC 03-249**

**A. Carrier Information:**

1. Name of the carrier;
2. The carrier's Study Area Code;
3. Carrier type as designated by the FCC such as rural ILEC, non-rural ILEC, competitive ETC serving lines in the rural and/or non-rural service areas;
4. The applicable Code of Federal Regulations (CFR) section(s) for which the federal universal service high-cost support is provided;
5. The current basic residential rate excluding Extended Area Service in the area they serve; and
6. A statement, under oath, that the federal universal service high-cost support provided to the carrier will be used only for the provision, maintenance, and upgrading of facilities and services for which the support is intended.

**B. Basic Residential Service Rate:**

All ETCs, whether, rural or non-rural, are required to include in their current basic residential service rates excluding Extended Area Service (EAS) in the areas they serve.

**C. Filing Dates:**

1. On or before September 15 if eligible for the federal universal service high-cost support for the first, second, third and fourth quarters of succeeding year.
2. On or before December 15 if eligible for the federal universal service high-cost support for the second, third and fourth quarters of the succeeding year.
3. On or before March 15 if eligible for the federal universal service high-cost support for the third and fourth quarters of that year.
4. On or before June 15 if eligible for the federal universal service support for the fourth quarter of that year.

## Section II – Compliance with FCC 05-46

- A. A two-year service quality improvement plan, including, as appropriate, maps detailing progress towards meeting its prior two-year improvement plan, explanations of how much universal service support was received and how the support was used to improve service quality in each wire center for which designation was obtained, and an explanation of why network improvement targets, if any, have not been met. If a designated ETC has submitted a five-year plan in a GRC application that has been approved by the Commission and is still in effect, the carrier may refer to its GRC filing and submit a progress report on the plan covered by the GRC.
- B. Detailed information on outages in the ETC's network caused by emergencies, including the date and time of onset of the outage, a brief description of the outage, the particular services affected by the outage, the geographic areas affected by the outage, and steps taken to prevent a similar outage situation in the future. If an ETC has submitted a Major Service Interruptions report in accordance with CPUC Memorandum dated October 5, 1977, the ETC need not submit the same report. However, in their self-certification letter, the ETC should cite the date(s) of submission of the report; and
- C. Information on the number of unfulfilled requests for service from potential customers for the past year and the number of complaints per 1,000 handsets or lines. If an ETC has submitted the Held Primary Service Order and Customer Trouble Reports in accordance with Sections 3.1 and 3.3 of G. O. 133-B, the ETC need not submit the same reports. However, in their self-certification letter, the ETC should cite the date(s) of submission of the reports.

### Section III - Sample Advice Letter

Date

Company

Advice Letter No.

Director, Telecommunications Division  
California Public Utilities Commission  
505 Van Ness Ave.  
San Francisco, CA 94102

Re: Self-Certification of Eligibility to Receive Federal Universal Service Support in Compliance with Resolution T-17002

Dear Sir:

This advice letter is a compliance filing in accordance with Resolution T-17002. The purpose of this letter is to provide the California Public Utilities Commission with the following sworn statement:

[Name of Company], [Study Area Code] is a [carrier type designated by the Federal Communications Commission] eligible to receive federal universal service high-cost support pursuant to [applicable Code of Federal Regulations citation].

The current basic residential rate(s) excluding Extended Area Service (EAS) in [Name of Company]'s service area is/are [amount].

On behalf of [Name of Company], the undersigned declares under penalty of perjury under the laws of the State of California that federal high-cost support received by [Name of Company] will be used only for the provision, maintenance, and upgrading of facilities and services for which the support is intended.

\_\_\_\_\_  
Print Name of Signatory

Title

Phone:

Email:

- Attachments:
1. Two -Year Service Quality Improvement Plan (to be submitted by existing ETCs in accordance with Section I.C. of Appendix B and Ordering Paragraph 2 of Resolution 17002)
  2. Detailed Information on Outages (Major Service Interruptions) in the ETC's Network Services
  3. Number of Unfulfilled Requests for Service from Potential Customers for the Past Year and the Number of Complaints per 1,000 Handsets or Lines (Customer Trouble Reports and Held Primary Service Report)

Public Utilities Commission  
STATE OF CALIFORNIA

October 5, 1977

FILE SECTION  
GENERAL OFFICE

TO ALL TELEPHONE UTILITIES:

MAJOR SERVICE INTERRUPTIONS

You are requested to report to the Communications Division of the  
Utilities Commission any major interruptions in telephone service.

The following is the definition of, and reporting procedure for, a major  
service interruption.

Description - A service interruption is considered major if  
it meets any of the following conditions.

1. Complete loss of inward and/or outward calling  
capability from a central office for periods in  
excess of the following:  
  
For entities with less than 10,000 primary  
stations ..... 30 minutes  
  
For entities with greater than 10,000  
primary stations ..... 10 minutes
2. Central offices isolated from the toll network.
3. Cable, microwave, carrier or other facility  
damage or failure affecting over 1,000 customers.
4. Unusual call volumes which occur for any reason  
that result in significant central office blockage.
5. Any anticipated conditions that may seriously  
affect service as a result of equipment problems  
or heavy call volumes.

MAJOR SERVICE INTERRUPTIONS REPORTING FOR  
INTEREXCHANGE CARRIERS PROVIDING TELEPHONE  
SERVICES IN THE STATE OF CALIFORNIA

Description - A service interruption is considered major if  
it meets the following conditions:

1. 30,000 or more California customer calls blocked for  
a period of 10 consecutive minutes or more at the  
IEC's toll switch.
2. Toll switching entity blocked from the statewide  
toll switching network for a period of 10  
consecutive minutes or more.
3. Any cable (fiber or other), microwave or other  
facility damage or failure, where the calls are not  
routed automatically to other transmission  
facilities.
4. Any anticipated conditions that may seriously affect  
service as a result of equipment problems or heavy  
call volumes.
5. Any network or service interruption that results in  
media attention.

Reporting Procedures

Written reports are normally satisfactory. In cases where large number of customers are affected or that are otherwise of great severity, a telephone report should be made promptly.

Initial reports shall be submitted to the Commission Division of Ratepayer Advocates (DRA) staff as promptly as possible after first knowledge of interruption or expected interruption.

Interim reports shall be made as necessary to keep the DRA staff informed of current service conditions.

Final reports shall be made confirming that service has been restored. Depending upon circumstances, one report may suffice for all.

Written reports shall be sent to:

California Public Utilities Commission\*  
505 Van Ness Avenue, Room 4003  
San Francisco, CA 94102

Attention: Division of Ratepayer Advocates  
Telecommunications

Telephone Number (415) 703-1801

Fax Number (415) 703-4405

MAJOR SERVICE INTERRUPTION REPORT

DATE:

1. COMPANY:
2. SERVICE AFFECTED:
3. LOCATION:
4. FACILITY:
5. NUMBER OF CUSTOMERS AFFECTED:
6. DATE AND TIME OF INITIAL REPORT:
7. DATE AND TIME OF SERVICE INTERRUPTION:
8. DATE AND TIME OF SERVICE RESTORAL:
9. NUMBER OF CUSTOMER TROUBLE  
REPORTS RECEIVED: (If applicable)
10. CAUSE OF INTERRUPTION:
11. CORRECTIVE ACTION TAKEN TO RESTORE SERVICE:
12. PREVENTIVE ACTION AGAINST RECURRENCE:
13. COMMENTS:
14. COMPANY CONTACT:

## **Exhibit 2**

### **California Public Utilities Commission Resolution No. T-17735, dated June 3, 2021**

**PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

**Communications Division  
Carrier Oversight and Programs Branch**

**RESOLUTION T-17735  
June 3, 2021**

**R E S O L U T I O N**

**RESOLUTION T-17735. Grants the Request of Five Carriers that Filed for Eligible Telecommunications Carrier Designation Pursuant to the Federal Communications Commission's Rural Digital Opportunity Fund Program.**

**SUMMARY**

By this Resolution, the California Public Utilities Commission (CPUC or Commission) conditionally grants the request of five applicants listed in Appendix A, for an eligible telecommunications carrier designation to obtain federal high-cost funding and provide federal Lifeline service, in the census block areas as approved by the Federal Communications Commission's (FCC) Rural Digital Opportunity Fund program (RDOF), as indicated in Appendix B. We find that the request is reasonable and consistent with the public interest and should be granted to the extent allowed by this Resolution.

**BACKGROUND**

**Rural Digital Opportunity Fund Phase I Auction (Auction 904)**

On February 7, 2020, the FCC adopted the Rural Digital Opportunity Fund (RDOF Order) to build broadband in rural and unserved/underserved communities.<sup>1</sup> RDOF will have a budget of about \$20.4 billion over the next ten years and will support minimum broadband speeds of 25/3 Mbps. RDOF will assign funding in two phases – Phase I will target unserved communities, and Phase II will target partially served communities.<sup>2</sup>

Winning RDOF bidders must obtain an ETC designation in the state(s) where it seeks support. The FCC does not require RDOF applicants to obtain ETC designation prior

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<sup>1</sup> See *In the Matter of Rural Digital Opportunity Fund, Connect America Fund*, Report and Order, WC Dkts. 19-126 & 10-90, (FCC 20-5), released February 7, 2020.

<sup>2</sup> *Id.*, p. 3.

to bidding but each applicant will have 150 days after the public notice announcement of the winning bidders to obtain their ETC designation.<sup>3</sup>

On December 7, 2020, the FCC issued a Public Notice announcing the winning bidders for the RDOF Phase I Auction. There were 180 winning bidders nationwide in Auction 904. The award amount totals \$9.23 billion dollars over a 10-year period, with 5,220,833 locations covering 49 states and one territory. Over 99.7% in auction 904 areas have bidders providing download speeds of at least 100 Mbps.<sup>4</sup> California may receive up to \$695 million in RDOF awards, among 15 winning bidders.<sup>5</sup>

The FCC adopted service milestones<sup>6</sup> where winning bidders must meet deployment obligations in order to receive RDOF support. Carriers must commercially offer voice and broadband services to 40% of the locations receiving RDOF support within each state, as applicable, by the end of the three-year funding cycle, and then 20% of the locations each year thereafter until reaching 100%.<sup>7</sup>

#### Advice Letters - ETC Designation Requests

Five carriers submitted requests for ETC designation via the CPUC's Advice Letter (AL) process (described below). Four of the five carriers request ETC designation to obtain federal high-cost and Lifeline support. The fifth carrier, Time Warner Cable Information Services (TWCIS), who received a Lifeline-only designation in 2014,<sup>8</sup> requests designation to obtain federal high-cost and an expansion of Lifeline in the winning RDOF service areas. We address all of these requests in this Resolution.

The Commission received ALs from the following carriers:

1. Hunter Communications and Technologies, LLC (U-7281-C) AL #8, filed on January 6, 2021.
2. Charter FiberLink CA-CCO, LLC (U-6878-C) AL#175, filed on January 6, 2021.
3. Time Warner Cable Information Services, LLC (TWCIS) (U-6874-C) AL # 59, filed on January 6, 2021.
4. Cal-Ore Communications, Inc. (COM) (U-7035-C) AL #10, filed on March 1, 2021.
5. Anza Electric Cooperative, Inc. (AEC) (U-7297-C) AL #11, filed on March 15, 2021.

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<sup>3</sup> *Id.*, p. 38.

<sup>4</sup> See *Rural Digital Opportunity Fund Phase I Auction (Auction 904) Closes, Winning Bidders Announced*, Public Notice, AU Dkt. 20-34, WC Dkts. 19-126 & 10-90, (DA 20-1422), released December 7, 2020.

<sup>5</sup> *Id.*, Attachment B.

<sup>6</sup> RDOF Order, paras. 45-55.

<sup>7</sup> RDOF Order, para. 45.

<sup>8</sup> See CPUC Decision 14-03-038.

### **Federal ETC Designation Requirements**

In order to receive federal universal service support, an applicant must be designated as an ETC. Section 254(e) of the federal Telecommunications Act of 1996 (the Act), states that “only an eligible telecommunications carrier under section 214(e) shall be eligible to receive specific federal universal service support.”<sup>9</sup>

State commissions are given the primary responsibility for designating ETCs in their states. Section 214(e)(2) of the Act states that “[u]pon request and consistent with the public interest, convenience, and necessity, the state commission may, in the case of an area served by a rural telephone company, and shall, in the case of all other areas, designate more than one common carrier as an eligible telecommunications carrier for a service area designated by the state commission”<sup>10</sup> so long as the requesting carrier meets the requirements of Section 214(e)(1).

Section 214(e)(1) of the Act provides that, a common carrier designated as an ETC must offer services supported by the federal Universal Service Fund (USF) throughout the designated service area either by using its own facilities, resale, or by a combination of its own facilities and resale of another carrier’s services and must advertise the services and the related charges using advertising media of general distribution throughout the designated service area.<sup>11</sup> Advertising must include the availability of federal Lifeline services in a manner reasonably designed to reach those likely to qualify for those services.

The FCC rules require that a carrier requesting ETC designation must:

1. Certify that it will comply with the service requirements applicable to the support that it receives;
2. Submit a five-year plan that describes proposed improvements or upgrades to the applicant’s network throughout its proposed service area;
3. Demonstrate its ability to remain functional in emergency situations;<sup>12</sup>
4. Demonstrate that it will satisfy applicable consumer and service quality standards;
5. Demonstrate that it is financially and technically capable of providing the federal Lifeline service; and

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<sup>9</sup> 47 C.F.R. §§ 54.400 *et seq.* contains the Federal Communications Commission’s (FCC) Lifeline rules issued to implement § 254 of the Act. Section 54.401 defines Lifeline as a non-transferrable retail service offering for which qualifying low-income consumers pay a reduced charge for voice telephony service after applying the federal Lifeline support amount.

<sup>10</sup> 47 USC § 214 (e)(2).

<sup>11</sup> 47 USC § 214 (e)(1).

<sup>12</sup> 47 C.F.R. § 9.20 Backup power obligations.

6. Submit information describing the terms and conditions of any voice telephone service plans offered to federal Lifeline participants.<sup>13</sup>

In addition, before granting an ETC designation to a carrier, state commissions must determine that it is in the public interest to do so.

### **CPUC ETC Designation Requirements**

A carrier seeking an ETC designation also must comply with CPUC's ETC rules. In Resolution T-17002 (May 25, 2006), the CPUC adopted *The Comprehensive Procedures and Guidelines for ETC Designation and Requirements for ETCs*, which are consistent with FCC Order 97-157<sup>14</sup> regarding the designation of a telephone carrier as a qualified ETC. Pursuant to this Resolution, applicants seeking an ETC designation in California are required to provide the following:

1. A description of the proposed service offerings and attached service area maps;
2. A description of the advertising plan(s);
3. A statement of commitment to provide service;
4. A two-year service quality improvement plan;
5. A showing of the ability to remain functional in emergency situations;
6. A statement of commitment to consumer protection;
7. Demonstration that a carrier's usage plan is comparable to that of the incumbent LEC in the proposed service area; and
8. A public interest determination.

A carrier seeking Federal High-Cost support must also comply with Resolution T-17002, Appendix B, Sections I and II, and file an advice letter with the CPUC on an annual basis.

In addition to Resolution T-17002 ETC designation rules, carriers requesting an ETC designation must also comply with General Order (GO) 153 Lifeline rules, and CPUC User Fee and surcharge obligations. The CPUC User Fee is levied on all telecommunications carriers providing services directly to customers and the amount of fees is a percentage calculation based on all intrastate customer billings for telecommunications services. All telecommunications carriers and Voice over Internet Protocol (VoIP) providers are also required to collect and remit public purpose program surcharges from end-users. These surcharges fund the CPUC's universal service programs.

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<sup>13</sup> 47 C.F.R. § 54.202(a).

<sup>14</sup> See *In the Matter of Federal-State Joint Board on Universal Service*, Report and Order, CC Dkt. 96-45 (FCC 97-157), released May 8, 1997.

If the Commission, subsequently, (i.e., after this Resolution) alters the rules related to the receipt and/or maintenance of an ETC designation in a successor Commission decision(s), the Commission can choose, at that time, to maintain the ETC related provisions adopted in this Resolution or to rely upon the new ETC related rules.

### **Notice/Protests**

The Carriers served their AL filing via email to all parties on the ETC service list. No protests were filed.

### **DISCUSSION**

This Resolution adopts Staff's recommendation of approving the five carrier requests for ETC designation to offer federal High-Cost and federal Lifeline in the winning areas of the RDOF 904 auction. ETC designation is contingent upon each carrier receiving authorization from the FCC on final approval of the RDOF award. Staff finds that each of the carriers satisfies the federal and state ETC designation requirements.

#### **RDOF Phase I Auction Awards<sup>15</sup>**

- 1. Hunter Communications** – This company will receive \$5,475,648 over a ten-year period in RDOF awards to serve 1,620 locations within 93 CBs in California. The company will offer Fiber to the Premises (FTTP) at gigabit speeds and provide Voice over Internet Protocol (VoIP) services.
- 2. Charter FiberLink and Time Warner Cable Information Services (TWCIS)** – Both these companies are subsidiaries of CCO Holdings, LLC, the winning bidder of RDOF. TWCIS is the lead operating company working with Charter Fiberlink on building out broadband infrastructure in the RDOF winning service areas.<sup>16</sup> Both carriers will receive a total of \$231,835 combined, over a ten-year period in RDOF awards to serve 1,045 locations within 112 CBs in California. Of the total 1,045 locations, 521 will be served by Charter FiberLink and the remaining 524 locations will be served by TWCIS. Both companies will offer FTTP at gigabit speeds and provide VoIP services.
- 3. Anza Electric Cooperative** – This company will receive \$819,773 over a ten-year period in RDOF awards to serve 1,552 locations within 243 Census Blocks (CBs) in California. The company will offer FTTP at gigabit speeds and provide VoIP services.

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<sup>15</sup> See *Rural Digital Opportunity Fund Phase I Auction (Auction 904) Closes, Winning Bidders Announced*, Public Notice, AU Dkt. 20-34, WC Dkts. 19-126 & 10-90, (DA 20-1422), released December 7, 2020, Attachment A.

<sup>16</sup> See TWCIS AL#59 & Charter FiberLink AL#175.

- 4. Cal-Ore Communications** – This company will receive \$1,063,513 over a ten-year period in RDOF awards to serve 235 locations within 40 CBs in California. The company will offer FTTP at gigabit speeds and provide VoIP services.

Compliance with the Federal and State ETC Requirements

All five carriers must satisfy all federal and state ETC requirements in order to receive an ETC designation. Each of the carriers met the following federal and state ETC requirements:

**Demonstration that the services intended to be offered to comply with the voice telephony definition** – Pursuant to 47 U.S.C. § 214(e)(1) and (6), each of the five carriers submit that on a common carrier basis, it will provide the functional equivalent of voice-grade calls using VoIP technology through its own facilities-based network/infrastructure or a combination of its own facilities and resale of another carrier's services. Each carrier will offer residential VoIP telephony services with at least unlimited local calling and E911 service. See each carrier's respective websites for additional details on calling features.

**Advertise using media of general distribution** – All RDOF recipients must advertise the availability of voice and broadband services throughout the entire service areas.<sup>17</sup>

Accordingly, Hunter Communications explains that it will advertise its rates, charges, terms, and conditions throughout its entire area using media of general distribution. The company will also work with relevant state agencies, community-based organizations, and non-profits as part of its advertising efforts.<sup>18</sup>

Both Charter FiberLink and TWCIS will advertise the availability of their service offerings using media of general distribution.<sup>19</sup>

COM states it will advertise its offerings using media of general distribution, including print, radio, direct mail, and direct sales.<sup>20</sup>

AEC explains in its AL that it intends to advertise throughout the entire service areas utilizing social media, direct mail, radio, local newspapers, community events, and its own website.<sup>21</sup>

**Commitment to provide supported service throughout the designated service area** – Each carrier commits to provide service to all requesting customers within

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<sup>17</sup> See RDOF Order, para. 54.

<sup>18</sup> Hunter Communications AL#8, p. 5.

<sup>19</sup> TWCIS AL#59, p.13 and CharterFiberlink AL# 175, p.13.

<sup>20</sup> COM AL#10 p. 5.

<sup>21</sup> AEC AL#11 p.2

the areas that it is designated an ETC based on its own network facilities. However, the availability of service is contingent on the progress of the construction schedule. The carriers are committed to the service milestones as determined and required by the RDOF program.<sup>22</sup>

**Demonstration of ability to remain functional<sup>23</sup>** – All the carriers indicated that they have the ability to remain functional in emergency situations. Hunter Communications will have backup and redundancy in its' network to reroute traffic around damaged facilities and manage traffic spikes.<sup>24</sup>

Charter FiberLink and TWCIS have generators and battery backup at all headends and hubs in California. Facilities are also designed with redundancies and require less human interaction to remain functional during an emergency. Both companies will employ the same model of backup to RDOF service areas.<sup>25</sup>

COM established an emergency response plan for use in emergency situations. All primary network operations will have battery backup, generators, and redundancy. COM will also apply the same emergency response procedures to its RDOF service areas.<sup>26</sup>

AEC's network is backed up with batteries and generators, capable of providing up to 8 hours of backup in case of a power outage. Customers may purchase additional backup to extend the duration to 24 hours.<sup>27</sup>

**Demonstration of financial and technical capability** – All five carriers are financially and technically capable of providing their proposed broadband Internet access and VoIP telephony services. Staff reviewed submitted financial statements, including balance sheets and income statements. Staff also concluded that all five carriers had revenues from other sources and are established carriers with previous telecommunications experience.

**Commitment to meet public interest requirements for the proposed service areas** – All five carriers state that receiving the ETC designation will serve the public interest by bringing high-speed broadband and voice services to unserved/underserved areas as identified by the RDOF. The funds will enable carriers to expand their network into those high-cost areas and increase universal service.

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<sup>22</sup> See RDOF Order, paras. 45-55.

<sup>23</sup> See D.21-02-029.

<sup>24</sup> Hunter Communications AL#8, p. 6.

<sup>25</sup> TWCIS AL#59, pgs. 11, & 14-15.

<sup>26</sup> COM AL#10 p. 5.

<sup>27</sup> AEC data request response to Staff, dated July 24, 2020.

All carriers will offer all eligible locations access to gigabit broadband services and VoIP services.

**Commitment to satisfy all applicable consumer protection and service quality standards** – All five carriers will comply with all applicable state and federal consumer protection and service quality standards, according to their applications.

The FCC will provide oversight of the projects whereby bidders are subject to penalties or forfeiture. RDOF requires all bidders to provide service to 100% of eligible locations by the end of the sixth or eighth-year construction deadline, depending on the number of locations.<sup>28</sup>

#### Compliance with Commission User Fee and Surcharge Obligations

Staff has verified that each of the carriers is current with their payment of the annual CPUC User Fees and Public Purpose Program (PPP) surcharges. All the carriers are required to continue to remain current with their payments after receiving ETC designation. Failure to comply with these requirements may lead to enforcement action including, but not limited to, revocation of their CPCN operating authority, and/or authority to operate as an ETC in California.

#### Future Changes to Designated Service Areas and to Federal Lifeline Supported Services

All five carriers request ETC designation to provide broadband and VoIP services to high-cost unserved/underserved areas and qualifying low-income households in the areas approved by RDOF.

As a federal high-cost and Lifeline provider, each carrier is authorized to provide fixed broadband services and federal Lifeline VoIP services in the service areas as approved by the RDOF. However, regarding future changes that each carrier may want to make to their service areas in California, the company is required to file a Tier 2 advice letter that includes, supporting FCC documents (if pursuant to an FCC program/fund); a description of the areas to be served; a list of the geographic service areas; shapefile maps, and proposed service area(s) in excel format.

Carriers shall also file a Tier 2 Advice Letter for any future changes to their federal Lifeline supported service plans.

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<sup>28</sup> See RDOF Order paras. 45-55.

FCC's National Lifeline Eligibility Verifier (National Verifier)

Starting December 18, 2020, the FCC's National Verifier will be responsible for eligibility verification for all new subscribers of standalone Lifeline broadband service.<sup>29</sup> Carriers participating in the federal only Lifeline program must ask the Universal Service Administrator Company and/or the FCC's Wireline Competition Bureau's Telecommunications Access Policy Division prior to offering federal Lifeline supported services how they need to interact with or use the National Verifier.

Public Interest Determination

Before recommending the designation of a carrier as an ETC, Staff must determine that doing so would be in the public interest of California consumers.<sup>30</sup> Designating the five carriers as ETCs will serve the public interest and the needs of unserved/underserved customers and low-income households in California. High-cost unserved/underserved areas will have access to high-speed broadband and VoIP telephony services.

The companies will adhere to the RDOF program rules to build high-speed broadband infrastructure and begin commercially offering services to 40% of their locations by the end of the third-year buildout period.<sup>31</sup> Therefore, Staff finds that each of the carriers meets the criteria for public interest determination including providing the benefits of high-speed broadband and expeditious deployment of communications services to all Californians located in the RDOF areas.

Price Analysis

After comparing plan pricing with the FCC's criteria for ETCs subject to broadband public interest obligations, Staff finds that the pricing plans proposed by each of the carriers are reasonable.<sup>32</sup> Cal-Ore Communications did not finalize rates for broadband Internet Access at the time of filing but commits to pricing the services according to the FCC's Urban Rate Survey. Charter Fiberlink and TWCIS states that plan pricing will be similar to non-RDOF areas and did not provide specific pricing information.<sup>33</sup>

The chart below summarizes each of the RDOF carrier's proposed retail service offerings:

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<sup>29</sup> See *Wireline Competition Bureau Announces the Launch of the National Lifeline Eligibility Verifier in California*, Public Notice, WC Dkt. 11-42, (DA 20-1372), Released November 18, 2020.

<sup>30</sup> *In the Matter of Federal-State Joint Board on Universal Service*, Report and Order, CC Dkt 96-45 (FCC 05-46), released Mar 17, 2005 ¶ 40 and CPUC Resolution T-17002, *Appendix A, Section II-G: Public Interest Determination*.

<sup>31</sup> See RDOF Order, para. 45.

<sup>32</sup> <https://www.fcc.gov/economics-analytics/industry-analysis-division/urban-rate-survey-data-resources> (website last visited 3/12/2021).

<sup>33</sup> See [www.spectrum.com](http://www.spectrum.com)

**Broadband Internet Access/VoIP Pricing – Residential**

	Anza Electric	Cal-Ore Communications	Hunter Communications	Charter FiberLink/TWCIS
<b><u>Speed (Down/Up)</u></b>	<b><u>Price (Monthly)</u></b>	<b><u>Price (Monthly)</u></b>	<b><u>Price (Monthly)</u></b>	<b><u>Price (Monthly)</u></b>
<b>20 Mbps/20Mbps</b>	<b>\$20.00</b>	<b>N/A</b>		<b>N/A</b>
<b>100 Mbps/100 Mbps</b>	<b>\$49.00</b>	<b>N/A</b>		<b>N/A</b>
<b>300 Mbps/300 Mbps</b>	<b>\$79.00</b>	<b>N/A</b>		<b>N/A</b>
<b>100 Mbps/25 Mbps</b>		<b>N/A</b>	<b>\$59.99</b>	<b>N/A</b>
<b>500 Mbps/50 Mbps</b>		<b>N/A</b>	<b>\$89.99</b>	<b>N/A</b>
<b>1 Gbps/50 Mbps</b>		<b>N/A</b>	<b>\$129.99</b>	<b>N/A</b>
<b>VoIP Services<sup>34</sup></b>	<b>\$20.00</b>	<b>\$25.95</b>	<b>\$49.99</b>	<b>N/A</b>

Staff finds that all the proposed broadband Internet access and VoIP telephony plans listed in the above table, are reasonable and recommends approval.

**Due Diligence Review**

An integral part of Staff’s processing of an ETC designation request is a due diligence review to determine if the carrier has engaged in behavior that may call into question its fitness to be granted ETC designation to serve California consumers. The due diligence review includes, but is not limited to, conducting independent research about a carrier’s past operations to provide the Commission with information that may be pertinent in deciding whether or not to grant the ETC request. Typical research methods include performing Lexis/Nexis legal resource searches, internet searches, reviewing industry and trade publications, querying other governmental agencies, contacting the FCC and the Universal Service Administrative Company (USAC), reviewing a company’s history of operations, and consulting with the Commission’s Consumer Protection and Enforcement Division and Consumer Affairs Branch.

Staff did not discover any issues that would lead to a denial of any of the five carrier’s requests for authority to operate as an ETC service provider in the state of California. If

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<sup>34</sup> Includes unlimited local calling and E911, among other features. See each carrier’s respective websites for additional details.

substantive issues later emerge which raise public interest questions about any of the carrier's ability to offer subsidized program services in compliance with the authorities granted in this resolution, the Commission may pursue an enforcement action which may include fines, penalties, and the revocation of ETC designation in California.

### Safety Considerations

Given that safety and emergency communications are common concerns for all of California's telephone customers, Staff requires that each carrier fully and clearly inform prospective federal Lifeline participants that coverage limitations may affect VoIP access to NG 9-1-1, E-911, and/or legacy 911 in the event of an emergency, disaster, and power outages. Such disclosures include, but are not limited to, clear statements on marketing materials and conspicuous placement on the public website in the form of information content on webpages, footnotes, and/or listings on the frequently asked questions (FAQ) webpage.

Each carrier must adhere to the obligations as outlined in the FCC's Backup Power Order.<sup>35</sup> Specifically, annual notification of the availability of backup power-purchasing options, education, and outreach. Additionally, for facilities located in the Tier II and III High Fire Threat Districts (HFTDs)<sup>36</sup>, carriers must also comply with CPUC's [D.21-02-029](#).

### COMMENTS

In compliance with P.U. Code § 311(g), the Commission emailed a notice letter on April 30, 2021, informing all parties on the Eligible Telecommunications Carrier service list, the California LifeLine proceeding [R.20-02-008](#) service list, and the California Advanced Services Fund service list, of the availability of this Resolution for public comments at the Commission's website [www.cpuc.ca.gov](http://www.cpuc.ca.gov). The notice letter also informed parties that the final confirmed Resolution adopted by the Commission will be posted and available on the same website. The Commission received no public comments.

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<sup>35</sup> See *In the Matter of Ensuring Continuity of 911 Communications*, Report and Order, PS Dkt. 14-174, (FCC-15-98), released August 7, 2015, para. 4-5. See also PUBLIC SAFETY AND HOMELAND SECURITY BUREAU REMINDS providers of facilities-based fixed residential voice services that are not line-powered of upcoming requirement to Offer subscribers 24 hours of BACKUP POWER for customer premises equipment, Public Notice, PS Dkt. 14-174, (DA 18-1205), released November 27, 2018.

<sup>36</sup> <https://www.cpuc.ca.gov/firethreatmaps/> (website last visited 3/23/2021)

## **FINDINGS AND CONCLUSIONS**

1. The following RDOF winning bidders submitted Advice Letters requesting ETC designation:
  - Hunter Communications and Technologies, LLC (U-7281-C) AL #8, filed on January 6, 2021.
  - Charter FiberLink CA-CCO, LLC (U-6878-C) AL#175, filed on January 6, 2021.
  - Time Warner Cable Information Services, LLC (TWCIS) (U-6874-C) AL# 159, filed on January 6, 2021.
  - Cal-Ore Communications, Inc. (COM) (U-7035-C) AL #10, filed on March 1, 2021.
  - Anza Electric Cooperative, Inc. (AEC) (U-7297-C) AL #11, filed on March 15, 2021.
2. All five carriers will offer high-speed broadband and VoIP telephony services.
3. The Communications Division Staff recommends that all five carrier requests to operate as an Eligible Telecommunications Carrier (ETC) supported by the federal High-Cost and Lifeline program, be approved contingent on the following:
  - a) File required annual reports and compliance reports with the Commission, including FCC Form 481 and section 54.314 certifications;
  - b) Provide ad-hoc and recurring reports to the Commission as required by PU Code sections 581, 582 & 584;
  - c) Submit information to the Universal Service Administrative Company (USAC), pursuant to 47 CFR § 54.401(d), demonstrating that its Lifeline service meets the FCC requirements. A copy of the information submitted to USAC shall also be provided to the Director of the Communications Division, within 30 days after filing with USAC at email address [ETCReportingtoStates@cpuc.ca.gov](mailto:ETCReportingtoStates@cpuc.ca.gov);
  - d) Continue to comply with CPUC User Fee and surcharge remittance and reporting requirements. Failure to do so may result in enforcement action including penalties, fines, denial, suspension, and/or revocation of its ETC designation;
  - e) Provide terms and conditions, disclosures, and marketing materials, including scripts used by customer service representatives, to the CPUC

- Staff for review and approval prior to offering VoIP Lifeline?? service, dissemination, and/or availability to the public;
- f) Post-safety related information about VoIP telephone service coverage limitations on distributed terms and conditions, disclosures, marketing materials, including scripts used by customer service representatives, and on its company website;
  - g) Abide by all applicable state and federal consumer protection rules, including CPUC General Order 168, which is the Consumer Bill of Rights Governing Telecommunications Services;
  - h) To the extent applicable, if network facilities are located in Tier II and III HFTDs, carriers shall comply with [D.21-02-029](#) to ensure network resiliency and have at least 72-hours of backup in these facilities to provide uninterrupted services to the Californians; and
  - i) Comply with all FCC RDOF program rules and regulations, including but not limited to service milestones, reporting requirements, and performance targets.
4. Each carrier commits to comply with the CPUC's LifeLine enrollment process, including all eligibility rules and validation checks, and to provide the CPUC's LifeLine Administrator all required information for the Administrator to determine eligibility for the federal Lifeline program. This also applies to carriers participating in the California LifeLine Program.
5. Staff conducted a due diligence review to determine each carrier's fitness as it relates to business practice behavior and customer protection that may call into question its fitness to be granted ETC designation to serve California consumers. Staff found no fitness issues with any of the requesting carriers.
6. The Commission may pursue an enforcement action which may include fines, penalties, denial, suspension, and/or revocation of the ETC designation should substantive issues emerge after each carrier is approved which raise public interest questions about the carrier's operations.
7. For public safety reasons, all five carriers are required to clearly inform Lifeline customers that coverage limitations may affect VoIP telephony service including NG 9-1-1, E-911, and legacy 911 emergency calls during an outage. Disclosures should include but are not limited to, clear statements on all marketing materials and the company's website. Each carrier must also comply with the FCC's backup power obligations.

8. Each carrier should file a Tier 2 advice letter to request approval to change its service area including a description of the area(s) to be served, a list of the geographic service areas; shapefile maps, and proposed service area(s) in excel format.
9. Each carrier should file a Tier 2 advice letter to request approval for any future changes including, but not limited to, terms and conditions to the approved federal Lifeline supported service plans and/or California LifeLine plans.
10. All five carriers are authorized to provide federal high-cost and Lifeline services in the respective winning service areas of RDOF.
11. On April 16, 2021, the Commission emailed a draft of this resolution to the Eligible Telecommunications Carrier service list, the California LifeLine proceeding [R.20-02-008](#) service list, and the California Advanced Service Fund list, for public comments.
12. The Commission received no public comments.

**THEREFORE, IT IS ORDERED** that:

1. The Commission approves the following carriers as Eligible Telecommunications Carriers to obtain federal high-cost and Lifeline support in the designated service areas as determined by the Federal Communications Commission's Rural Digital Opportunity Fund Auction: Hunter Communications and Technologies, LLC (U-7281-C), Charter FiberLink CA-CCO, LLC (U-6878-C), Time Warner Cable Information Services, LLC (U-6874-C), Cal-Ore Communications, Inc. (U-7035-C) and Anza Electric Cooperative, Inc. (U-7297-C).
2. Each Eligible Telecommunications Carrier's designation shall be contingent upon the final authorization of the Federal Communications Commission's Rural Digital Opportunity Fund awards and the following:
  - a) File required annual reports and compliance reports with the Commission, including Federal Communications Commission Form 481 and 47 Code of Federal Regulations section 54.314 certifications;
  - b) Provide ad-hoc and recurring reports as required by Public Utilities Code sections 581, 582 & 584;
  - c) Submit information to the Universal Service Administrative Company pursuant to 47 Code of Federal Regulations § 54.401(d), demonstrating that its Lifeline service meets the FCC requirements. A copy of the information shall also be provided to the Director of the

Communications Division, within 30 days after filing with Universal Service Administrative Company at email address [ETCReportingtoStates@cpuc.ca.gov](mailto:ETCReportingtoStates@cpuc.ca.gov);

- d) Continue to comply with the Commission's User Fee and surcharge remittance and reporting requirements. Failure to do so may result in enforcement action including penalties, fines, denial, suspension, and/or revocation of its eligible telecommunications carriers designation;
  - e) Provide terms and conditions, disclosures, and marketing materials, including scripts used by customer service representatives, to the Communications Division Staff for review and approval prior to offering any federal Lifeline supported service, dissemination, and/or availability to the public;
  - f) Post safety related information about federal Lifeline supported service coverage limitations (during outages) on distributed terms and conditions, disclosures, marketing materials, including scripts used by customer service representatives, and on its company website;
  - g) Abide by all applicable state and federal consumer protection, including the Commission's General Order 168, which is the Consumer Bill of Rights Governing Telecommunications Services;
  - h) To the extent applicable, if facilities are located in Tier II and III High Fire Threat Districts (HFTDs), carriers shall comply with Commission Decision [D.21-02-029](#) to ensure network resiliency and sufficient backup in their networks; and
  - i) Comply with all Federal Communications Commission's Rural Digital Opportunity Fund program rules and regulations, including but not limited to service milestones, reporting requirements, and performance targets.
- 3. Each carrier shall file a Tier 2 Advice Letter to request approval for any future changes to its approved designated service area. This request shall describe the areas to be served and include a list of the geographic service areas; shapefile maps, and proposed service area(s) in excel format.
  - 4. Each carrier shall file a Tier 2 Advice Letter to request any future changes to its federal Lifeline supported service plans and/or California LifeLine plans as applicable.
  - 5. Each carrier that participates in the California LifeLine Program shall comply with General Order 153 and the California LifeLine Administrator's

enrollment process including, but not limited to, validation checks, transmission requirements, and efforts to prevent waste, fraud, and abuse.

6. Each carrier that participates in the federal Lifeline Program shall clearly label the Voice over Internet Protocol telephony service plans approved in this Resolution as “federal Lifeline Voice over Internet Protocol service plans” and refer to the federal Lifeline program, where applicable, in the respective company’s terms and conditions, disclosures, and marketing materials.
7. Each carrier must comply with all applicable Commission rules, orders, decisions, and resolutions, the California Public Utilities Code, and Lifeline rules. Failure to do so may result in fines, penalties, denial, suspension, and/or revocation of its eligible telecommunications carrier designation in California.

This resolution is effective today.

I certify that the foregoing resolution was duly introduced, passed, and adopted at a conference of the Public Utilities Commission of the State of California held on June 3, 2021. The following Commissioners voting favorable thereon:

/s/ RACHEL PETERSON

Rachel Peterson  
Executive Director

MARYBEL BATJER  
President  
DARCIE L. HOUCK  
MARTHA GUZMAN ACEVES  
CLIFFORD RECHTSCHAFFEN  
GENEVIEVE SHIROMA  
Commissioners

# APPENDIX A

## List of Carriers Designated as Eligible Telecommunications Carrier

Carrier Name	Type of Designation
Hunter Communications and Technologies, LLC (U-7281-C) AL#8	Federal High-Cost and Lifeline in RDOF areas.
Charter FiberLink CA-CCO, LLC (U-6878-C) AL #175	Federal High-Cost and Lifeline in RDOF areas.
Time Warner Cable Information Services, LLC (U-6874-C) AL#159	Federal High-Cost and Lifeline in RDOF areas.
Cal-Ore Communications, Inc. (U-7035-C) AL #10	Federal High-Cost and Lifeline in RDOF areas.
Anza Electric Cooperative, Inc. (U-7297-C) AL #11	Federal High-Cost and Lifeline in RDOF areas.

